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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,416	03/15/2004	Paul C. Mioduski	127143.00003	1961
26707 7590 08/06/2008 QUARLES & BRADY LLP RENAISSANCE ONE TWO NORTH CENTRAL AVENUE PHOENIX, AZ 85004-2391				
EXAMINER GIBSON, ROY DEAN				
ART UNIT 3730		PAPER NUMBER		
MAIL DATE 08/06/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/801,416

Applicant(s)

MIODUSKI ET AL.

Examiner

Roy D. Gibson

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26, 28-30, 32-34, 36, 37, 39-41, 43, 44 and 47-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26, 28-30, 32-34, 36, 37, 39-41, 43, 44 and 47-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-849)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Entry of Amendment

Applicant's amendment filed on April 14, 2008 is acknowledged. Claims 27, 31, 35, 38, 42 and 45-46 have been canceled by the applicant, thus claims 26, 28-30, 32-34, 36, 37, 39-41, 43, 44 and 47-50 are currently pending.

Prior Rejections or Objections

The following comments pertain to the rejections or objections in the most recent Office action mailed on January 23, 2008. Rejections under 35 U.S.C. 102 and 103 are maintained and new art has been found for previously allowed claim 48, therefore this Office action is non-final.

Response to Arguments

In response to applicant's argument that Edwards et al. (5,484,400) fails to disclose the tissue is treated for various named conditioned. However, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 26, 28, 30, 33-34, 37, 39-41 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Edwards et al. (5,484,400). Edwards et al. disclose a medical treatment device for treating tissue, comprising:

a radio frequency (RF) generator for providing an RF signal;

a probe (Figures 6 and 7) coupled to the RF generator for transmitting RF energy from the RF signal into the tissue to be treated, wherein the RF energy is imparted into the tissue to increase its temperature while maintaining a cold junction temperature of a thermocouple whose hot junction is located in the probe, the probe including a sensor for measuring the temperature of the tissue and providing a measured temperature signal; and

a control unit coupled to the RF generator for controlling the RF signal response to the measured temperature signal from the probe (col. 3, lines 29-40, col. 4, lines 5-50, col. 5, lines 11-29, col. 5, line 52-col. 6, line 31, col. 8, line 47-col. 9, line 11 and col. 9, lines 25-50).

Further to claim 28, 30, 32, 33, 37, 39 and 44, Edwards et al. disclose the medical treatment device further includes an enclosure housing the RF generator and control unit, the enclosure having a control knob (equivalent selection means) for selecting a target temperature, a display for displaying the measured temperature signal, and a connector for connecting the probe; wherein the temperature of the tissue to be treated is ramped up (increased) over a period of time, and an indicator signal is

generated when the temperature of the tissue reaches the target temperature; wherein the tissue is elevated to a target temperature and held at the target temperature for a predetermined period of time as determined by criteria pertaining to a thermal dose necessary for treatment of the tissue; and, wherein the probe includes a high voltage tip and a ground tip (mono-polar operation and col. 5, line 52-col. 6, line 51).

Further to claims 46 and 48-50, Edwards et al. disclose the method of treating tissue essentially as claimed as detailed by the device description above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29, 36 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards et al. ('400) in view of Ryan (6,280,441). Edwards et al. fail to specifically disclose the RF signal is modulated. However, Ryan a device for RF ablation with a power modulator to maintain the impedance of the tissue at its low point before it begins to rise (col. 7, lines 12-41). Therefore, it would have been obvious to one of ordinary skill in the art to modify the device and method of Edwards et al. as taught by Ryan, to provide a power modulator that modulates the RF signal to maintain the impedance of the tissue at its low point before it begins to rise.

Claims 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen et al. (6,210,402) in view of Edwards et al. ('400). Olsen et al. discloses the method essentially as claimed for treating a variety of skin conditions previously treated by other methods including acne and warts (col. 1, line 45-col. 2, line 47). In addition Olson et al. disclose a thermocouple at the distal end of the probe for measuring the tissue temperature (col. 5, line 57-col. 6, line 5). But, Olsen et al. fail to specifically disclose the temperature control methods of claims 49 and 50. However, Edwards et al ('400) does disclose these method details as presented above for the device claims. Therefore, at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of Olsen et al., as taught by Edwards et al, to provide the control procedure as claimed..

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen et al/Edwards et al. as applied to claim 48 above, and further in view of Ryan ('441) who supplies the teaching of an RF modulator as presented above in the rejection of claim 29 for example.

Conclusion

Applicant's arguments filed 4/14/2008 have been fully considered but they are not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Roy D. Gibson/
Primary Examiner
Art Unit 3739

July 31, 2008